***THE HONOURABLE SRI JUSTICE P.S.NARAYANA**

+WRIT PETITION No.16472 of 2005

% 24-10-2007

D.V.R.K.V. Prasad Raju. … Petitioner

VS.

$ 1. Government of Andhra Pradesh, rep. by its Secretary, Department of Endowments, Secretariat, Hyderabad and 2 others. …Respondents

! COUNSEL FOR THE APPELLANT: SRI S.SATYANARAYANA PRASAD

^ COUNSEL FOR THE RESPONDENT Nos.1 & 3: GOVERNMENT PLEADER FOR ENDOWMENTS

COUNSEL FOR THE RESPONDENT No.2: SRI M.AUDINARAYANA RAJU

< Gist :

> Head Note:

? CITATIONS:

HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.16472 of 2005

Date: October 24th, 2007

Between:
D.V.R.K.V. Prasad Raju … Petitioner

And

1. Government of Andhra Pradesh,
   rep. by its Secretary, Department
   of Endowments, Secretariat,
   Hyderabad and 2 others. … Respondents

* * *

ORDER:

-

Heard Sri S.Satyanarayana Prasad, learned senior counsel representing petitioner, learned Government Pleader for Endowments and Sri M.Audinarayana Raju, representing respondents.

2. The writ petition is filed for a writ of *Mandamus* or any other appropriate writ or order or direction, declaring action of the second respondent in not implementing the proceedings in Memo bearing No.17927/Endts.-IV(2)/05-1, dated 30.4.2005 and consequential proceedings issued by the Commissioner, Endowments, bearing No.L1/9197/2005, dated 05.5.2005, as arbitrary, illegal and unjust and issue a consequential direction to the respondents to forthwith conduct public auction to the land in question, namely 36 acres of land in Survey No.276 in Adivivaram village, popularly known as “Pulleti Dhara Thota” in Visakhapatnam District and to grant lease hold rights for a period of thirty years for development of medicinal plants, as per the above referred proceedings and pass such other suitable orders.

3. Third respondent-Commissioner of Endowments, A.P., Hyderabad, was impleaded *suo motu* by this Court.

4. Sri Satyanarayana Prasad, learned counsel representing the writ petitioner had taken this Court to respective pleadings of the parties and would point out that as on the date of filing of the writ petition, the lease was subsisting and the writ petitioner also had a right of renewal. The decision to be taken in this regard is the Government. The counsel also would maintain that the Commissioner of Endowments had withdrawn prior order and in the light of the facts and circumstances, the second respondent has

nothing to do with the present question of either granting lease or not granting lease for a period of 30 years and it is for the Government to decide. Learned senior counsel also would maintain that even on the ground of promissory estoppel, the writ petitioner is entitled to the relief as prayed for. The learned senior counsel also would maintain that the writ petition did not become infructuous. While concluding, the learned senior counsel would submit that let the respondents follow due procedure in accordance with law by duly considering the representations made by the petitioner also in this regard.

5. Learned Government Pleader for Endowments would submit that R-3 was *suo motu* impleaded. The learned Government Pleader for Endowments drawn the attention of this court to relevant paras in counter-affidavit of R-3 and further had pointed out to the relevant rules and also the provisions of the Statute in this regard. Learned Government Pleader for Endowments also explained procedure to be followed and would maintain that every lease should be by public auction in particular. The learned Government Pleader, Endowments pointed out at paras 19 and 20 of the counter-affidavit and would maintain that fresh public auction to be conducted in accordance with law. It is prerogative of the institution and the institution interest always kept in mind in cases of this nature, even otherwise the subsequent orders had not been questioned and, hence, in a way the writ petition became infructuous.

6. Sri M.Audinarayana Raju, learned counsel representing R-2 would maintain that in the light of the stand taken in para 10 of the counter-affidavit and in view of the fact that the representation had been rejected by the Trust Board, no relief can be granted as prayed for in the writ petition and the writ petition is liable to be dismissed.

7(a). The relief prayed for in the writ petition already had been referred to supra. It is stated in para 3 of the writ petition affidavit that in Adivivaram village in survey No.276, the second respondent temple had a land popularly known as 'Pulleti Dhara Thota', which was yielding no income to the second respondent temple, was lying idle. It is also stated that the second respondent temple conducted public auction to give leasehold rights in respect of this land. Since the petitioner was the highest bidder, initially

the land was given for two years and the petitioner had subsisting lease up to 30th June 2007. The lease amount was Rs.86,000/- per year and the petitioner had paid the entire lease amount for all the three years in advance.

(b). It is also further stated that the land, which had been taken on lease by the petitioner, was not yielding any income and he spent Rs.5.00 lakhs to improve it. The petitioner also promoted an idea to develop the land with medicinal plants. As the area, which was leased out to the petitioner, was around Ac.36-00, experts in the cultivation of medicinal plants advised the petitioner that around 10 varieties of plants viz., Ambretta, Ashwagandhia, Citronella, Clocimum, Discorea, Glory Lilly, Jasmine, Lemon grass, Sarpagandha and Vanilla, could be developed in the land and it would take 15 to 20 years to develop the land and it would give recurring income. In the above circumstances, keeping in view the lease granted to the petitioner for a period of 3 years, the petitioner had explained in detail about proposed plan to develop the land and also submitted proposals to the respondents. The respondents directed the petitioner to deposit entire three years rent in advance to consider his request and accordingly he had deposited the same.

(c) It is further stated that in the said discussions, the petitioner had also agreed that in respect of granting lease to the petitioner for 30 years, the petitioner had no objection with this project. After deliberating on this issue and after obtaining necessary reports from the officials, including the second respondent, the first respondent issued proceedings in Memo bearing No.17927/Endts.-IV (2)/05-1, dated 30th April, 2005 under which the licence of the petitioner for collection of usufructs from the land for a period of 3 faslis was terminated and the second respondent was instructed to collect the amounts due from the petitioner and the second respondent was further directed to put the land in question covered for usufructuary rights in public auction for lease for a period of 30 years in the better interest of the temple. The petitioner agreed for the same and he paid the entire lease amount for three years. The second respondent, as per the directions in the proceedings issued by the first respondent, should take further steps to put the land in question for public auction for a period of 30 years for the said purpose and the Commissioner, Endowments, issued consequential

proceedings bearing No.L1/9197/2005 dated 05.5.2005 directing the second respondent to conduct public auction of the land in question for a period of 30 years. Inspite of above said events, circumstances and the directions issued by the first respondent and also the Commissioner, Endowments, the second respondent had not taken any action. The second respondent had collected the entire lease amount from the petitioner for three years at a time, subject to the condition that the land in question would be put to public auction for 30 years for the purpose of cultivation of medicinal plants in the said land and the same had been accepted by the respondents.

(d) It is further stated that the inaction of the second respondent is arbitrary, illegal and unjust. With the correspondence, discussions and the proceedings issued by the first respondent, the petitioner believed that they were acting upon his request and as per their direction, the petitioner paid the entire three years rental in advance. The respondents are estopped from denying public auction of the land for a period of 30 years as per their directions. It is further stated that pursuant to the letters and the proceedings issued by the respondents, though petitioner's lease was directed to be terminated and he paid the entire three years lease amount, the petitioner was physically in possession and enjoyment of the subject land as leasehold right holder and the petitioner was apprehending that the respondents may try to dispossess him from the land in question. In such circumstances, the petitioner approached this Court.

8.(a) In the counter filed by the first respondent, it is stated that the Commissioner, Endowments Department in his proposals dated 21.4.2005 had reported that the petitioner represented that he was not in a position to pay the annual rents fixed for the land allotted to him under Sy.No.276, situated at Adivivaram village, because he was not able to get enough remuneration on it. The lease was valid till 30.6.2007 and requested for a lease for 30 years for the said land to raise herbal and medicinal plants. The Commissioner of Endowments Department stated that the Executive Officer refused to extend the lease for 30 years as the Trust Board of Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, had resolved to reject for grant of long lease to avoid complications vide Resolution No.522, dated 31.01.2005. Further, the Commissioner of Endowments Department had opined that to get more income to the temple, it was desirable to terminate the existing lease and go for public auction for

a lease of 30 years.

(b) It is further stated that on careful consideration of the reports of the Executive Officer and Commissioner of Endowments Department, Government had decided to terminate the existing lease on the above land and go for public auction in the better interest of the institution in accordance with the provisions of the Endowment Act 1987 and accordingly orders were issued in Govt. Memo.No.17927/Endt. IV (2)/2005-1, dated 30.4.2005. It is also further stated that in response to the above Memo, the Commissioner of Endowments Department had also sent another proposal vide his letter No.L1/9177/2005, dated 03.5.2005 in which he had reported that Sri D.V.R.K.V. Prasada Raju of Visakhapatnam became the highest bidder for the leasehold rights for collection of usufructs at Pulletidhara Thota and Madhava Dhara Thota, and in his representation he had submitted that he was unable to remit the lease amount. Hence, the Commissioner of Endowments Department had requested the Government that the lease for collection of usufructs at Pulletidhara Thota and Madhavadhara Thota by D.V.R.K.V. Prasada Raju may be terminated and the amounts due for the existing period of lease to be collected from him and requested permission to put the said land in public auction for long lease i.e., for a period of 30 years. Accordingly, the proposals of the Commissioner of Endowments Department had been approved subject to the following conditions:-

1. That the subsisting lease in favour of Sri D.V.R.K.V. Prasada Raju, Visakhapatnam shall be terminated and the amounts due for the existing period of lease shall be collected from him, and the deposits if any paid by the lessee shall be forfeited as per the provisions of the Act 30/1987.

2. The lands shall be put for public auction for a period of thirty (30) years lease in the better interest of the institution strictly in accordance with the provisions of A.P. Charitable & Hindu Religious Institutions & Endowments Act 30/1987 as proposed by the Commissioner of Endowments department (vide in Memo.No.17927/Endt.IV (2)/2005-2, dated 04.5.2005).

(c) Further it is averred that the second respondent temple had got fruit bearing and flower garden in S.No.276 of Adivivaram village and the

land is yielding no income to the temple and lying idle was absolutely incorrect. There are also Mango, Jack fruit and Cashew nut trees besides Champaka trees etc., and they are yielding fruits and flowers and the lessees were getting substantial income from the usufruct of those trees. In the auction held for one year from 01.8.1998 to 31.7.1999 Sri K.V.S.Ramayya took lease of the garden in question for Rs.1,41,600/- per annum; for the period from 16.7.2000 to 13.6.2002 Sri Moola Ramu took the land on lease for two years at Rs.1,11,000/- per annum; for two years from 01.3.2003 to 30.6.2004 (two harvests) the writ petitioner Sri D.V.R.K.V. Prasada Raju, took the garden on lease at Rs.1,28,000/- per annum. The writ petitioner again took the garden for lease from 01.7.2004 to 30.6.2007 for a period of three years at the rate of Rs.86,000/- per annum. The Executive Officer had reported that the petitioner paid lease amounts prior to issue of orders by Government in Memo.No.17927/Endt.IV (2)/2005-1, dated 30.4.2005. Therefore the allegation that after obtaining the reports from Devasthanam, the Government issued the Memo under which his license for collection of usufruct from the trees for a period of 3 faslis was terminated and the Devasthanam was instructed to collect the amounts due from was not true.

(d) He also reported that the writ petitioner submitted a representation dated 28.2.2005 requesting the authorities to consider for grant of long lease atleast for a period of 30 years and if it is not feasible, the authorities may conduct public auction to enable the writ petitioner to participate in it. The said representation was forwarded to Devasthanam by the Commissioner of Endowments Department, in Rc.No.L1/9197/2005, dated 02.3.2005. Earlier on 14.11.2004, the writ petitioner submitted a representation to Devasthanam requesting to extend the existing lease for a period of two more years. On that, a proposal was placed before the Trust Board for extension of lease for another two years i.e., from 30.6.2007 to 30.6.2009 to the writ petitioner. But, the Trust Board in Resolution No.522, dated 31.01.2005 rejected the proposal for extension of the lease for two more years to the writ petitioner. This fact was also submitted by the Devasthanam to the Commissioner of Endowments Department, rejecting

the proposal for extension of lease for two years to the writ petitioner in his office report Rc.No.C3/2961/2004, dated 09.3.2005. Further, it is stated that the Executive Officer further reported that on receipt of the proceedings dated 05.5.2005 of the third respondent i.e., Commissioner of Endowments Department, a proposal was placed before the Trust Board regarding grant of lease for 30 years. The Trust Board in its resolution No.46, dated 07.8.2005 resolved not to give lease for more than three years and confirmed the earlier resolution passed by the Board No.522, dated 31.01.2005. It is also averred that in exercise of the powers conferred under Section 82 read with Section 153 (1) of A.P. Endowments Act 30/1987, the Government issued A.P. Charitable and Hindu Religious Institutions and Endowments Immovable properties and other rights (other than agricultural lands) Leases and Licenses Rules, 2003 in G.O.Ms.No.866, Revenue, dated 08.8.2003. Rule 4 of the said Rules deal with the procedure for lease/license of immovable properties belonging to A.P. Charitable and Hindu Religious Institutions and Endowments. Rule 4 of the said rules reads as hereunder:-

> 4 (1): In the case of immovable properties such as building and sites to be given or used for residential purposes only, leases shall be granted. In the case of other immovable properties such as shops, buildings sites etc., to be given or used for the purposes of running business and such other rights of usufruct, fishery, collection of coconut pieces, human hair etc., licenses shall be granted;
>
> (2)(a). No lease of immovable property shall be granted for a period exceeding three years.
>
> (b) No license shall be granted for a period exceeding three years.
>
> (3)(a). Where it is proposed to grant lease or license for a period exceeding the limits specified in sub rule 2 (a) and (b), the Executive Authority shall obtain the prior permission of the Commissioner before causing publication of the notice under rule 6 of these rules duly submitting proposal to the commissioner.
>
> (b)(i). The Commissioner, on receipt of the proposal from the Executive Authority shall invite objections and suggestions for

the proposed lease or license and the notice shall specify the date before which such objections and suggestions are to be received. The notice shall be published in the locality where the property is situated.

(ii) the Commissioner may after considering the objections and suggestions if any received, accord permission for such a period not exceeding five years with such terms and conditions as may be specified for the lease/license to be conducted in public auction.

(iii) The Government shall be the competent authority to grant permission for any lease or license for a period exceeding five years by duly following the above procedure. Whereas, it had been noticed that the procedure envisaged under sub rule 3 of Rule 4 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other rights (other than Agricultural lands) Leases and Licenses Rules, 2003 had not been adhered to while issuing the impugned Govt. Memos. Dated 04.5.2005 and consequential proceedings issued by the Commissioner of Endowments on 05.5.2005. Further it is stated that the writ petitioner had no right to compel the second respondent or the Commissioner, Endowment Department, Hyderabad and the Government to put the land in auction for 30 years to permit him to raise the medicinal plants etc., destroying the existing fruit bearing and flower bearing trees. Further, on earlier occasions also the individuals to whom leases were granted for long periods misused the same and converted them for the purposes other than agriculture or gardens such as house sites and commercial purposes and sold to innocent public as a result of which Devasthanam is facing lot of litigation. In view of the above stated facts and circumstances, the Executive Officer, Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, Visakhapatnam, had requested the Commissioner of Endowments Department to cancel the proceedings issued by him in L1/9197/2005, dated 05.5.2005. When the matter stood thus, Sri D.V.R.K.V. Prasada Raju had filed the present writ petition questioning the action of the second respondent i.e., Executive Officer, Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam in not implementing the orders of the first respondent in Memo.No.17927/Endt.IV (2)/2005-1, dated 30th April 2005, and the consequential proceedings of the Commissioner of Endowments, in Proceedings No.L1/9197/2005, dated 05.5.2005 pending disposal of the writ petition and also to direct the respondents not to interfere with

his possession and enjoyment of the land in S.No.276, in Adivivaram village, popularly known as "Pulleti Dhara Thota" in Visakhapatnam District. This court by its order dated 03.11.2005 suo motu impleaded the Commissioner of Endowments Department as 3rd respondent and passed the following interim order.

"The Commissioner of Endowments, A.P., Hyderabad, shall consider the proposal made by the second respondent in his letter dated 20.8.2005 and take appropriate decision in accordance with law as expeditiously as possible preferably within a period of (4) weeks from the date of receipt of this order. Till such decision is taken, the respondents are directed not to vary the directions issued in Government Memo No.17927, dated 04.5.2005."

(e) It is further stated that though the Commissioner of Endowments Department had passed orders in compliance of the directions of this Court dated 03.11.2005 within the prescribed time limit, but due to communication gap, the order could not be brought to the notice of this Court at the time of hearing of the case on 05.12.2005. It is also further stated that inspite of the fact that the proceedings passed by the commissioner of Endowments Department on 05.5.2005 were subsequently cancelled by his proceedings dated 03.12.2005 by that time the interim orders passed by this court on 05.12.2005. Since the orders passed by the Commissioner of Endowments Department in Rc.No.L1/9197/2005, dated 05.5.2005 were not in subsistence as on 05.12.2005, it had become difficult for the respondents to implement the interim orders passed by this Court. If is further reported that for the reasons stated in preceding paras and in the light of the Rule 4(3) of the A.P. Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Land Rules 2003 issued in G.O.Ms.No.866, dated 08.8.2003, the procedure laid down had not been followed erroneously while issuing the orders in Govt. Memo. Dated 04.5.2005 and the consequential proceedings issued by the Commissioner of Endowments Department in his Rc.No.11/9197/05, dated 05.5.2005 and the proceedings issued by any authority without following the procedure laid down under the statute were *ab initio void*. The currency of existing lease of the petitioner was valid till 30.6.2007 only, as such the petitioner at best

can be continued till expiry of the present lease period subject to payment of lease rentals as per the provisions of lease agreement. If the petitioner fails to remit the lease rentals as per the schedule of payments, his lease was liable for termination as per the conditions of the lease agreement.

(f) The Government had carefully examined the entire matter and felt that the orders issued by the Government in Memo No.17927/Endt. IV (2)/2005-2, dated 04.5.2005 regarding 30 years period of lease was not a valid order as per the provisions of the Act 30 of 1987 and the rules made thereunder and they noticed that as required under rule 4 (3)(a)(b) of the rules issued in G.O.Ms.No.866, Revenue, dated 8.8.2003, the third respondent had not published any notification calling for objections and suggestions for the proposed lease of the immovable properties in question belonging to Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, for grant of licence for a period of 30 years and the third respondent had submitted proposal to the Government without following procedure laid down under sub-rule (4) of Rule 4 of the Rules issued in G.O.Ms.No.866, Revenue (Endts.1) Department, dated 08.8.2003. The Government, therefore, decided to cancel the orders issued in Govt. Memo No.17927/Endt. IV (2)/2005-2, dated 04.5.2005.

9(a). In the counter filed by the third respondent, it is stated that Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam was having Ac.36-60 cents in Sy.No.276 of Adavivaram (V) popularly known as Pulletidhara and the Devasthanam had conducted public auction to lease out the said land for collection of usufruct of trees like Mango, Jack fruit etc., in the said land for a period of 3 years i.e., from, 01.7.2004 to 30.6.2007 and in the said auction, the petitioner knocked down the bid at Rs.86,000/- per year. It is also stated that the petitioner made a representation to the Commissioner of Endowments on 28.2.2005 stating that he had prepared a proposal for establishing a herbal medicinal park in the leased area to the extent of Ac.36-00 cents after consultation with the experts in the cultivation of medicinal plants and requested to consider grant of long period lease for a period of 30 years subject to payment of reasonable rent so as to enable him to develop the land as proposed by

him and if it is not feasible to give the land on long lease, the authorities may conduct public auction in which he prepared to participate along with other bidders and the said representation had been forwarded to the Executive Officer of Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam, for his remarks. Further, it is stated that in his Letter dated 09.3.2005 the Executive Officer of Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam, had submitted that the above land was situated very near to N.H.5 at a distance of 1 Km. and the costs of said land was increasing day by day and it was not possible to give the said land to the petitioner on long lease of 30 years, since the Trust Board of Devasthanam had already rejected the request of the petitioner in its resolution No.522, dated 31.01.2005. However, the then Commissioner, Endowments Department, A.P., Hyderabad had submitted a proposal to the Government vide Lr.No.11/9177/2005, dated 21.4.2005 and informed that to get more income to the Temple, it was desirable to terminate the existing lease and go for a public auction for a lease of 30 years which will fetch more income to the temple and request to issue necessary orders in the matter. It is also averred that the Government i.e., first respondent issued orders vide their Memo No.17927/Endts-IV (2)/2005-1, dated 30.4.2005 permitting the Commissioner of Endowments to terminate the existing lease on the above land and to go for public auction in the better interest of the institution in accordance with the A.P. Charitable and Hindu Religious Institutions and Endowments Act 1987. In pursuance of the above orders of the Government, the Commissioner of Endowments had submitted proposals to the Government vide his Letter dated 03.5.2005 stating that one Sri D.V.R.K.V. Prasada Raju of Visakhapatnam had become highest bidder for the lease hold lrights for collection of usufructs at Pulletidhara Thota and Madhava Dhara Thota and he made a representation on 08.02.2005 stating that he was not able to remit the lease amount and requested to terminate the lease for collection of usufructs at Pulletidhara Thota and Madhava Dhara Thota by D.V.R.K.V. Prasada Raju and the amounts due for the existing period of lease to be collected from him and to grant permission to put the said land in public auction for long lease i.e., for a period of 30 years. The Government in

their Memo No.17927/Endts-IV(2)/
2005-2, dated 04.5.2005 issued orders approving the proposal of the Commissioner of Endowments subject to following conditions.

(i) The subsisting lease in favour of Sri D.V.R.K.V. Prasada Raju, Visakhapatnam shall be terminated and the amounts due for the existing period of lease shall be collected from him. The deposits if any paid by the lessee shall be forfeited as per the provisions of the Act 30/1987.

(ii) The lands shall be put for public auction for a period of thirty (30) years lease in the better interest of the institution strictly in accordance with the provisions of A.P. Charitable and Hindu Religious Institutions and Endowments Act 30/1987, as proposed by the Commissioner of Endowments.

(b) Further in pursuance of the above orders of the Government, the Commissioner of Endowments in his proceedings No.L1/9197/2005, dated 05.5.2005 issued orders to terminate the licence for collection of usufructs of the thope granted in earlier order in D.Dis.No.L1/44553/204-2, dated 07.12.2004 in favour of Sri D.V.R.K.V. Prasada Raju for a period of 3 faslis with instructions to the Executive Officer, Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam, to collect the amounts due for the existing period of lease and also to forfeit the deposits, if any, paid by the individual and to put the lands in question covered by the said usufructory rights in public auction for lease, for a period of 30 years in he better interest of the institution.

(c) While replying to paras 10 to 12, it is stated that on the request made by the petitioner herein, the then Commissioner of Endowments had submitted proposals to the Government for putting the land in question in public auction for lease for a period of 30 years in the better interest of institution and after obtaining the orders from the Government, the Executive Officer, Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam, who is the second respondent, was also instructed to put the lands in question covered by the said usufructuary rights in public auction for lease, for a period of 30 years.

(d) In response to the orders of the Commissioner of Endowments issued in Rc.No.L1/9197/2005, dated 05.5.2005, the Executive Officer, Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam, who is second respondent herein, submitted a report through his Lr.Dt.20.8.2005 stating that according to Section 82 read with Section 153(1) of A.P. Endowments Act 30/87 and Rules made thereunder the period of lease shall be for 3 years and the authorities grant such leases. If it exceed the limit of 3 years and in case of long term lease, the Commissioner of Endowments and the Government had to take action as per Rule 8 (2)(b) (i) and (ii) of the said Rules and the proposal for lease out the said land for a period of 30 years of long lease is not beneficial to the institution and requested to cancel the orders of the Commissioner of Endowments issued in Rc.No.L1/9197/2005, dated 05.5.2005.

(e) While the matter stood thus, this Court in its orders dated 03.11.2005 in this writ petition directed the Commissioner of Endowments to consider the proposal made by the Executive Officer, Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam i.e., second respondent herein, in his letter dated 20.8.2005 and take appropriate decision in accordance with law as expeditiously as possible, preferably, within a period of four weeks from the date of receipt of the order. Till such decision is taken, the respondents are directed not to vary the directions issued in Government Memo No.17927, dated 04.5.2005. Further, this Court by its oders dated 03.11.205 impleaded the Commissioner of Endowments as third respondent in this writ petition and the said orders were received by the office of the third respondent on 17.11.2005.

(f) In pursuance of the said interim directions issued by this Court, third respondent, considering the report of the second respondent i.e., Executive Officer of Sri Varaha Laxmi Narasimha Swamy Devasthanam, Simhachalam dated 20.8.2005 and considering the fact that the procedure stipulated under relevant rules were not followed while issuing orders in Rc.No.L1/9197/2005, dated 05.5.2005, cancelled the said orders vide Rc.No.L1/9197/2005, dated 03.12.205 and, hence, the orders of

termination of lease held by the petitioner were also stands cancelled.

(g) This court directed the third respondent to pass orders within four weeks from the date of receipt of interim orders. The said orders were received in the office of third respondent on 17.11.2005. As such, the third respondent had to pass orders on the report of the second respondent i.e., Executive Officer, before 15.12.2005. As already stated supra, the third respondent had passed orders vide Rc.No.L1/9197/2005, dated 03.12.2005 i.e., within the time stipulated by this Court. As 03.12.2005 happens to be Saturday and 04.12.2005 being Sunday, copy of the orders of the third respondent dated 03.12.2005 were communicated to the office of the learned Government Pleader for Endowments on 05.12.2005 through FAX to bring the said fact to the notice of this Court. But, by that time the matter was already called for hearing on that day, hence, the fact of passing of orders by the third respondent could not be brought to the notice of this Court when the matter was called on 05.12.2005. This Court passed interim direction on 05.12.2005 in the above writ petition.

(h) As per the provisions of the Rule 4 (3) of the Rules issued under G.O.Ms.No.866, dated 08.8.2003, it is proposed to grant lease or licence for a period more than 3 years, on proposal received from the concerned Executive Officer to that effect, objections and suggestions shall be called for from the public through a notification to be published in the locality where the property was situated. Only after considering the objections and suggestions if any received, the Government can grant permission for any lease or licence for a period exceeding 5 years. But, no such procedure was followed before according permission to put the subject lands in public auction for lease of 30 years.

(i) It is stated that in view of the orders passed by the third respondent on 03.12.2005, in pursuance of the orders of this Court dated 03.11.2005 the orders passed in Rc.No.L1/9197/2005, dated 05.5.2005, are no longer in force.

10. These are the respective stands taken by the parties.

11. The relevant Rules, the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Immovable Properties and other rights (other than Agricultural lands) Leases and Licences Rules, 2003 had been relied upon. Rule 3 specifies as hereunder.

> 3. (1) All leases or licences shall be made by way of public auction;
>
> Provided that, the Commissioner may, on a request made in writing by the executive authority permit the lease of any property or right otherwise than by way of public auction, if he is satisfied, for reasons to be recorded in writing that the interest of the institution or endowment will not suffer thereby. He may grant permission to such executive authority to grant a lease otherwise than by way of public auction.
>
> (2) The public auction shall be held at the place where the properties are situated or rights exist.
>
> Provided that the competent authority may, if he is satisfied that in case the holding of auction at a place other than the one in which the properties proposed to be leased or licensed are situated, will not be detrimental to secure a proper bid or will be held to secure a better bid or to thwart local collusion among the bidders, permit such auction but no auction shall be held, in a district other than the one in which the property is situated.

Rule 4 specifies as hereunder.

> (1) In the case of immovable properties such as building and sites to be given or used for residential purposes only, leases shall be granted. In the case of other immovable properties such as shops, buildings sites etc., to be given or used for the purposes of running business and such other rights of usufruct, fishery, collection of coconut pieces, human heir etc., licenses shall be granted.
> (2) (a) No lease of immovable property shall be granted for a period exceeding three (3) years
>
> (b) No licence shall be granted for a period exceeding three (3) years.

(3) (a) Where it is proposed to grant lease or licence for a period exceeding the limits specified in sub rule 2 (a) and (b), the Executive Authority shall obtain the prior permission of the Commissioner before causing publication of the notice under rule 6 of these rules duly submitting proposal to the Commissioner.

(b) (i) the Commissioner, on receipt of the proposal from the Executive Authority shall invite objections and suggestions for the proposed lease or licence and the notice shall specify the date before which such objections and suggestions are to be received. The notice shall be published in the locality where the property is situated.

(ii)The Commissioner may after considering the objections and suggestions if any received, accord permission for such a period not exceeding five years with such terms and conditions as may be specified for the lease licence to be conducted in public auction.

(iii)The Government shall be the competent authority to grant permission for any lease or licence for a period exceeding five (5) years by duly following the above procedure.

It is needless to say that the Government shall be competent authority to grant permission for any lease or licence for a period exceeding 5 years by duly following above procedure. Other Rules 5, 6, 7, 8 and 9 also had been relied upon.

12. The Memo No.17927/Endt.IV(2)/2005-1, dated 30.4.2005 reads as hereunder.

GOVERNMENT OF ANDHRA PRADESH
REVENUE (ENDTS.IV) DEPARTMET

MEMO No.17927/Endt.IV (2)/2005-1, dated 30.04.2005

Sub: Endowments Department- Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, Visakhapatnam district- Lease of land in Sy.No.276, situated at Adivivaram village in favour of Sri D.V.R.K.V. Prasada Raju- Proposals submitted by the C.E.D.- Regarding.

Ref: From the Commissioner of Endowments Department, Lr.No.L1/9177/2005, dated 21.4.2005.

-o0o-

The Commissioner of Endowments Department has reported that Sri D.V.R.K.V. Prasad Raju, Visakhapatnam has represented to the Executive Officer, Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam stating that he is not in a position to pay the annual rents fixed for the land allotted to him in Sy.No.276 situated at Adivivaram village because he is not able to get enough remureration on it. The validity of the lease expires on 30.6.2007. The petitioner has requested for a further lease of (30) years for the said land to raise urban and medicinal plantations. The E.O. of the subject temple has reported that it is not possible to extend the lease for (30) years and recommend for termination of the existing lease and go for public auction in the interest of institution. The C.E.D., has therefore, requested the Government for the grant of permission to terminate the lease and put the lands for fresh lease by public auction.

After carefully examining the proposal, Government hereby permit the Commissioner of Endowments, Hyderabad to terminate the existing lease on the above land and go for public auction in the better interest of the institution, in accordance with the provisions of A.P. Charitable & Hindu Religious Institutions and Endowments Act, 1987.

J.P. MURTHY
PRINCIPAL SECRETARY TO GOVERNMENT

To
The Commissioner of Endowments Department,
Hyderabad.

Further reliance also was placed on Rc.No.L.1/9197/2005, dated 05.5.2005 and the said proceedings reads as hereunder.

Office of the Commissioner,
Endowments Department, AP., Hyderabad

Rc.No.L.1/9197/2005, dt. 05.05.205

Sub:- Endowments Department- Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, VisakhapatnamDistrict-LeaseoflandinSy.No.276, situated at Adivivaram (V) in favour of Sri D.V.R. K.V.Prasad Raju- Lease terminated- Orders- Issued- Reg.

Ref:-1.ThisOfficeD.Dis.No.L1/44533/04-2, dt.07.12.04.

2.Rep. dt.28.02.05, from Sri D.V.R.K.V.Prasad Raju

3.Rc.No.C3/2961/04, dt.09.03.05, from the Executive Officer Sri Vara Lakshmi Narasimha Swamy Devasthanam Simhachalam.

4.This Office Lr.No.L1/9197/2005, dt.21.04.2005, addressed to the Prl. Secretary to Government. Rev. (Endts.) Dept., A.P., Hyderabad.

5.Govt. Memo No.17927/Endts-IV(2)/05-1,

6. This office Lr.No.L1/9177/05, dt.03.05.05, addressed to the Prl.Secretary to Govt., Rev. (Endts.) Department, A.P., Hyderabad.
7. Govt. Memo No.17927/Endts-IV(2)/05-1, dt.04.05.05.

Orders were issued in this office reference 1st cited, for collection of usufructs from Madhavadhara and Pilletidhara for an amount of Rs.86,000/- for three crops from the date of its handing over up to 30.6.2007 in favour of Sri D.V.R.K.V. Prasad Raju, s/o Pullam Raju.

In the reference 2nd cited the said licensee has submitted that it is an oldest thope aged about 50 to 60 years and it is not giving yield in commensurate with the auction bid amount and consequently the highest bidder is getting loss every year. While stating his own reasons in detail, the licensee requested that the lease may be granted on permanent basis subject to payment of annual lease amount up to 5 years as fixed by the authorities and enhancement of the lease amount at the reasonable percentage of 20% for every 5 years. He further stated that if it is not feasible to give the land on long lease the authorities conduct public in which he is prepared to participate along with the other participants.

The Executive Officer, Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, has submitted detailed comments on the said representation, wherein he has reported that the Trust Board has already rejected the request of the said licensee, vide their agenda No.522, dt.31.01.05, for further extension of license of 2 more years.

Accordingly the Government were addressed in this office reference 4th cited, that more income to the temple is desirable, to terminate the existing lease and go for public auction for a lease of 30 years which will fetch more income to the temple.

The Government have issued orders in the reference 7th cited approving the proposal of the Commissioner of Endowments Department, to terminate the subsisting lease and to collect the amounts due for the existing period of lease in favour of Sri D.V.R.K.V. Prasad Raju, Visakhapatnam, duly forfeiting the deposits if any paid by the lease as per the provisions of the Act 30/87.

The Government have further issued directions to put the lands for public auction for a period of 30 years lease in the better interest of the institution strictly in accordance with the provisions of the A.P.C & H.R.I. & Endowments Act 30/87.

Under the above circumstances, the license for collection of usufructs of the thope granted in D.Dis.No.L1/44533/C4-2, dt.07.12.04, in favour of Sri D.V.R.K.V. Prasad Raju, for a period of (3) Faslies is hereby terminated.

The Executive Officer, Sri Varaha Lakshmi Narasimha Swamy Devasthanam, Simhachalam, Visakhapatnam is hereby instructed to collect the amounts due for the existing period of lease and also to forfeit the deposits if any paid by the individual.

The Executive Officer is further instructed to put the lands in question covered by the said usufructuary rights in public auction for lease for a period of thirty (30) years in the better interest of the institution.

//BY ORDER OF THE COMMISSIONER//

Sd/- K.Ramakrishna Kumar,
Joint Commissioner (Estates)

13. The writ petitioner made a representation on 06.11.2004 to the Executive Officer and the same reads as hereunder.

Date:06.11.2004

From
D.V.R.K.V.Prasada Raju,
Plot No.A-10,
Dayal Nagar Colony,
Visakhapatnam.

To
The Executive Officer,
Simhachalam Devasthanam,

Simhachalam,
Visakhapatnam District.

Respected sir,

Sub:- Extension of lease- Land situated at Pulletidhara Garden- Requested- Regarding.

***

I would like to submit that I am the successful highest bidder in the public auction for the land by name Pulletidhara Gardens for the period from 01.7.2003 to 30.6.2006 after paying the auction deposit and also lease amount for the 1st year.

In this connection I want to submit that there are old plantations perhaps 50 years age of the following trees like Mango, Sampenga, Jack fruit, Soapberry etc., in an extent of nearly Ac.10-00 cts. Out of the total extent of Ac.36-00 cts. And he remaining land is vacant which is hill area with gravel explosive is not useful for any agriculture purposes. I have incurred nearly one lakh rupees for the development on the garden and also I have to incur recurring expenditure of one lakh every year without expecting any benefits for the lease period. I expect returns only after completion of 3 years.

In the above circumstances, I submit that the period of lease given to me is not sufficient to get the benefits for the expenditure incurred by me. At least 2 years of lease extension is required to get the income on the said garden. I am willing to enhance 10% on the present lease amount for the extension period of 2 years.

Taking into consideration of all the above facts I request your good self to extend the lease period for 2 years more so as to enable me to do the developmental activities and also get the income on my capital investment.

Thanking you.

Yours faithfully.
Sd/- xx xx xx xx
(D.V.R.K.V.Prasada Raju)

The representation dated 28.5.2004 where some further facts had been narrated also had been placed before this Court. The proceedings Rc.No.C3/2916/04, dated 20.2.2005 also had been placed before this Court. The representation dated 10.12.2003 also had been placed before

this Court.

14. It is no doubt true that the petitioner had been requesting for grant of lease for a period of 30 years and to consider his request the petitioner had been making certain representations. It is pertinent to note that the first respondent had taken specific stand that the proceedings made by the Commissioner of Endowments Department dated 05.5.2005 had been subsequently cancelled by proceedings dated 03.12.2005. It is also further stated that for the reasons stated in the preceding paras and in the light of Rule 4(3) of rules specified above in G.O.Ms.No.866, dated 08.8.2003 the procedure laid down has not been followed erroneously while issuing the Memo dated 04.5.2005 and the proceedings issued by any authority without following the procedure laid down under the statute would be *ab initio* void. The lease of the petitioner is valid upto 30.6.2007, as such the petitioner, at best can be continued till the expiry of present lease period subject to payment of lease rent as per the provisions of lease agreement. If the petitioner fails to pay rentals as per schedule payment, lease is liable to be terminated as per the conditions of lease agreement. Further specific stand had been taken that Government have carefully examined the entire matter and felt that the orders issued by the Government in Memo No.17927/Endt.IV (2)/2005-2, dated 04.5.2005 regarding 30 years period of lease is not a valid order as per the provisions of Act 30/87 and the rules made thereunder and they noticed that as required under Rule 4(3)(a)(b) of the Rules issued in G.O.Ms.No.866 Revenue (Endts.I) Department dated 08.8.2003, the third respondent had not published any notification calling for objections and suggestions for the proposed lease of the immovable properties in question belonging to the institution for grant of licence for a period of 30 years and the third respondent had submitted a proposal to the Government without following procedure laid down under sub-rule 3 of Rule 4 of the Rules issued in G.O.Ms.No.866, Revenue (Endts.I) Department, dated 08.8.2003. Government, therefore, decided to cancel the orders issued in Government Memo No.17927/End.IV(2) 2005-2, dated 04.5.2005.

15. In the light of the proceedings referred to supra, the representations made by the writ petitioner and also in the light of the specific stands taken

in relevant paras of the counter-affidavit of R-1 in particular, especially paras 18, 19 and 20, this Court is of the considered opinion that inasmuch as the lease period already had expired and the respondents were not inclined to consider the representations made by the writ petitioner after expiry of lease period, the writ petitioner has no manner of right over the property in question. The respondents are at liberty to proceed with the public auction in accordance with law. It is needless to say that, may be the writ petitioner also is at liberty to participate in such public auction, which will be conducted by the respondents in accordance with law. Except making this observation, no further relief can be granted. It is no doubt true in a way the writ petition became infructuous, but however, the senior counsel representing the writ petitioner would maintain that since the representations are pending, atleast these representations may be considered and the concerned authorities may be directed to dispose of these representations in accordance with law. It is needless to say that it is for the respondents to take a decision in this matter in accordance with law. However, in the peculiar facts and circumstances, except observing that writ petitioner also can participate in public auction, which may be proceeded with in accordance with law, no further relief can be granted.

16. With the above observation, the writ petition is hereby dismissed. No costs.

_____

(P.S. NARAYANA, J)

Date: October 24th, 2007.

BSB

L.R. Copy to be marked.